

card shall be issued to replace a card which has been determined by the county FSA executive director who issued the card to have been lost, destroyed, or stolen.

§ 723.307 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid if:

(1) It is not issued or delivered in the manner prescribed;

(2) An entry is omitted or is incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or,

(4) Any erasure or alteration has been made and not properly initialed by the county FSA executive director.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county FSA executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county FSA executive director who issued the card, or by a marketing recorder), the farm operator, or the person in possession of the card, shall return it to the county FSA office at which it was issued.

§ 723.308 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the FEDERAL REGISTER.

§ 723.309 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer or dealer through an auction sale shall be paid by the warehouse operator who may deduct an amount equivalent to the

penalty from the price paid to the producer or dealer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State FSA office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Farm Service Agency may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include the following:

(1) Advances to producers,

(2) Charges for hauling, or

(3) Any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sales.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.